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Financing of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994

Financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

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Report of the Advisory Committee on Administrative and Budgetary Questions

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I. Introduction

1. The Advisory Committee on Administrative and Budgetary Questions has considered the first performance report for the International Tribunal for the Former Yugoslavia for the biennium 2004-2005 (A/59/547) and the first performance report for the International Criminal Tribunal for Rwanda for the biennium 2004-2005 (A/59/549). The Advisory Committee has also considered the report of the Secretary-General on the biennialization of the budgets of the Tribunals (A/59/139). During its consideration of the reports, the Committee met with the Registrar, the Deputy Registrar and the Chief Administrative Officer of the International Tribunal for the Former Yugoslavia, the Prosecutor, the Deputy Prosecutor and the Registrar of the International Criminal Tribunal for Rwanda and with other representatives of the Secretary-General, who provided additional information.

II. Biennial budgeting at the Tribunals

2. The report of the Secretary-General on the biennialization of the budgets of the Tribunals in document A/59/139 is submitted pursuant to General Assembly resolutions 58/253 and 58/255. The report contains background information and analysis of biennial budgeting, as well as the views of the Board of Auditors on the issues, as requested by the Assembly. The Secretary-General proposes that the Assembly maintain the biennial format for the presentation of the budgets for the Tribunals.

3. As indicated in paragraph 4 of the report, since their inception, the resource requirements of the Tribunals had been approved on an annual basis. However, the presentation was changed to a biennial cycle, on an experimental basis, effective the biennium 2002-2003 in General Assembly resolutions 55/225 A and 55/226, in which the Assembly noted that the benefits of that provisional reform could include the use of two-year employment contracts at the Tribunals.

4. In his analysis of the issue contained in paragraphs 5 to 11 of the report, the Secretary-General indicates that with the adoption of a biennial budgeting cycle, both time and effort have been saved on the part of the Tribunals, providing greater scope for planning, management and coordination of activities; the work of the Tribunals has become more focused as a result of the longer budgeting period; biennial budgeting has helped programme managers to focus on long-term and strategic aspects of budgeting, which is especially important in the upcoming years as the Tribunals prepare and plan to downsize staffing and capital resources as the investigative and trial stages come to an end. Biennial budgeting does not prevent Member States from revising the requirements of the second year as a result of a change in focus. For example, for the biennium 2004-2005, the General Assembly, in its resolutions 58/253 and 58/255, requested the Secretary-General to resubmit the proposal for resource requirements for the Investigations Divisions of the Tribunals for 2005 in the context of the first performance report.

5. The Advisory Committee also notes from paragraph 11 of the report that the return to annual budgets would imply that staff could be offered contracts for up to one year only, which would further exacerbate the already difficult situation of staff retention and have a negative impact on staff morale and, by extension, on the functioning of the Tribunals and their completion strategies.

6. **The Advisory Committee supports the proposal of the Secretary-General that the General Assembly maintain the biennial format for the presentation of the budgets for the Tribunals.**

III. First performance reports of the Tribunals for the biennium 2004-2005

7. The primary purpose of the first performance reports is to identify adjustments required owing to variations in the rates of inflation and currency exchange and in the standards assumed in the calculation of the initial appropriations. However, as indicated in paragraph 4 above, the General Assembly decided to defer its consideration of the 2005 resource requirements for the Investigations Divisions of the Tribunals to the fifty-ninth session and requested the Secretary-General to resubmit his proposals in the context of the first performance reports for the biennium 2004-2005. Accordingly, the first performance reports of the Tribunals include both technical adjustments as well as the resource requirements of the Investigations Divisions for 2005.

8. The Advisory Committee notes that the performance reports take into account savings resulting from economy measures applied during 2004. The economy measures were put into effect in 2004 owing to the very serious financial situation of the Tribunals caused by non-receipt of contributions. Steps had been taken, as of May 2004, to freeze recruitment and scale down operations. A decision was also made to defer the acquisition of goods and services and to curtail non-Court related travel. Savings resulting from these economy measures are estimated at $6.7 million and $5.1 million for the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, respectively. The Committee was provided, upon request, with the breakdown of the savings, as follows:

Object of expenditure	*International Tribunal for the Former Yugoslavia*	*International Criminal Tribunal for Rwanda*
Other staff costs	-	481 400
Consultants and experts	-	171 900
Travel	156 400	601 700
Contractual services	2 982 300	-
General operating expenses	1 649 300	1 359 800
Supplies and materials	388 500	514 400
Furniture and equipment	1 571 200	1 932 800
Total	**6 747 700**	**5 062 000**

9. The Advisory Committee was informed during its deliberations that the financial situation of the two Tribunals remained serious. A freeze on recruitment was still in effect and the Tribunals were increasingly having difficulties retaining qualified staff. This, in combination with high vacancy rates, impacts negatively on the efficiency and effectiveness of the Tribunals, including their completion strategy. Annex I to the present report, provided by the Secretariat, contains detailed information on the impact of the recruitment freeze.

10. The Advisory Committee was informed during its deliberations that 78 staff of the Office of the Prosecutor had left the International Tribunal for the Former Yugoslavia and joined the International Criminal Court and 134 staff had resigned from the Registry of the International Tribunal for the Former Yugoslavia. The Committee was further informed that about 50 per cent of senior Professional posts in the Prosecutions Division of the International Tribunal for the Former Yugoslavia would become vacant by the end of 2004 and that seven out of nine investigation team leaders of the Investigations Division would leave the Tribunal in the coming three months. As regards the International Criminal Tribunal for Rwanda, it had 135 vacancies as of the end of October 2004. The Committee was informed that the Investigations Division, with its 21 vacancies, was one of the areas of the Office of the Prosecutor most affected by the freeze, with a consequential negative impact on work and the completion strategy; a number of vacancies occurred during the freeze, including several critical positions in the Office of the Prosecutor (one P-5 vacancy of the Chief of the Legal Advisory Section, two P-5 vacancies of Senior Trial Attorneys and four P-4 vacancies of Trial Attorneys).

11. **The Advisory Committee is concerned about the information it received from the representatives of the two Tribunals that the current freeze would have a significant negative impact on the completion strategy schedule. The Committee trusts that a way can be found to ameliorate the current staffing situation of the two Tribunals.**

12. **The Advisory Committee is also concerned about the fact that experienced security officers leave the Tribunals for other United Nations organizations and United Nations peacekeeping operations. This may adversely impact the security of staff and activities of the Tribunals.** The Committee notes, for example, that the vacancy rate for security officers of the International Tribunal for the Former Yugoslavia was 14.2 per cent as at October 2004. **The Committee requests that a way be found to improve the incumbency situation of security officers of the Tribunals.**

IV. Resource requirements of the Investigations Division of the International Tribunal for the Former Yugoslavia for 2005

13. The proposed resource requirements for the Investigations Division of the International Tribunal for the Former Yugoslavia for 2005, estimated at $15,240,400 (gross), would provide for 148 posts (115 posts in the Professional and higher category and 33 General Service posts) with effect from January 2005, a reduction of 67 posts (53 Professional posts and 14 General Service posts), including a redeployment of two P-5 posts to the Appeals Unit (see para. 19 below). With effect from 1 July 2005, there will be 136 posts (103 posts in the Professional and higher category and 33 General Service posts), a further reduction of 12 Professional posts. Thus, the total reduction in the proposed staffing of the Investigations Division for 2005 would be 79 posts (65 posts in the Professional and higher category and 14 General Service posts), compared with the staffing complement of 215 posts for 2004 (168 Professional posts and 47 General Service posts).

14. It is recalled that originally, the proposed staffing of the Investigations Division for the biennium 2004-2005 provided for an overall reduction of 61 posts,

including the abolition of 43 posts and the redeployment of 18 posts to other priority areas of the Tribunal (see A/58/226, para. 17).

15. The Advisory Committee notes that the current proposal of the Secretary-General is based on the experience gained during 2004 and reflects reassessed requirements of the Tribunal with respect to investigative staff needed in order to provide support to the Office of the Prosecutor in carrying out post-indictment pre-trial, trial and appeal activities as from 1 January 2005.

16. As indicated in paragraph 14 of the report of the Secretary-General on the International Tribunal for the Former Yugoslavia (A/59/547), with the completion of all pre-indictment investigations by 31 December 2004, the Investigations Division will undergo a restructuring and realignment of resources with a view to focusing its efforts on two pillars of the overall completion strategy of the Tribunal, namely: (i) the fair and expeditious completion of trials at the Tribunal in accordance with the time line set for the completion strategy; and (ii) the transition from international to domestic prosecution, achieved by the transfer to local courts in the region of certain cases under the Tribunal's rule 11 bis against accused persons who have been indicted by the Tribunal. In addition, investigation dossiers and other materials will be provided to local prosecutors in the region for the potential prosecution of individuals investigated but not actually indicted by the Tribunal.

17. The Advisory Committee notes that the proposed staffing of the Investigations Division is based on the anticipated workload of the Tribunal during 2005. Paragraphs 18 to 38 of the report provide information on the anticipated workload and related staffing requirements. **The Advisory Committee welcomes the detailed analysis of staffing requirements in terms of projected workload.**

18. Paragraphs 39 and 40 of the report contain information on the travel requirements of the Investigations Division for 2005. These are estimated at $994,300, compared with $1,984,500 originally proposed for investigative travel for 2005. According to the Secretary-General, there would be a continuing need for investigative staff to travel to support pre-trial, trial and appeal work during 2005. This would include locating and interviewing witnesses, testimony taken under rule 92 bis, proofing witnesses, rebuttal of defence witness testimony, serving summonses on witnesses, search and seizure of material under search warrant.

19. **The Advisory Committee recommends approval of the proposed staffing of the Investigations Division of the International Tribunal for the Former Yugoslavia for 2005 as well as the proposed redeployment of two P-5 posts to the Appeals Unit, effective 1 January 2005. Moreover, the Committee recommends approval of the proposed travel requirements of $994,300 for the Investigations Division for 2005.**

V. Resource requirements of the Investigations Division of the International Criminal Tribunal for Rwanda for 2005

20. The proposed resource requirements for the Investigations Division of the International Criminal Tribunal for Rwanda for 2005, which amount to $14,221,500 (gross), would provide for 106 posts (88 posts in the Professional and higher category and 16 General Service posts), reflecting no change compared with the staffing complement for 2004. The Advisory Committee notes from paragraph 11 of

the report of the Secretary-General on the International Criminal Tribunal for Rwanda (A/59/549) that the Secretary-General's proposal takes into consideration paragraph 3 of Security Council resolution 1534 (2004), whereby the Council emphasizes the importance of fully implementing the completion strategies. According to the Secretary-General, the Office of the Prosecutor will be required to maintain its investigative capacity to continue to provide support in respect of the preparation of cases for trial, actual trial support, tracking of indicted fugitives and crucial witnesses, coordination of confidential sources and sensitive witnesses, supporting appeals and preparation of cases earmarked for transfer to national jurisdiction.

21. The Advisory Committee notes from paragraphs 16 to 29 of the report that the proposed staffing requirements of the Investigations Division of the International Criminal Tribunal for Rwanda takes into account projected workload for 2005. Table 4 of the report contains a breakdown of posts within the Investigations Division by support required for pre-trial, trial and appeals. The Committee welcomes the inclusion of this information in the report.

22. Paragraph 32 of the report provides information on the travel requirements of the Investigations Division for 2005, estimated at $550,000. The Secretary-General indicates there will be a continuing need for investigative staff to travel to support pre-trial, trial and appeal work during 2005. The travel requirements for 2005 relate to an estimated 280 trips to countries in West and East Africa, Europe and North America as well as travel within Rwanda.

23. **The Advisory Committee recommends approval of the proposed staffing of the Investigations Division of the International Criminal Tribunal for Rwanda for 2005. The Committee also recommends approval of the proposed travel requirements of $550,000 for the Investigations Division of the International Criminal Tribunal for Rwanda for 2005.**

VI. Other issues

24. Annex V to the report of the Secretary-General on the International Tribunal for the Former Yugoslavia and annex IV to his report on the International Criminal Tribunal for Rwanda contain a progress report on the legal aid system. This information is provided pursuant to General Assembly resolution 58/255, whereby the Assembly encourages the Tribunal to continue to implement and closely monitor reforms to its legal aid system and requests the Secretary-General to report thereon, in particular on consequent savings in defence costs, in his first performance report for the biennium 2004-2005.

25. The Advisory Committee exchanged views with the representatives of the Tribunal on the legal aid system and especially on the lump-sum system of payments. The Committee was informed that the lump-sum payment system, which was introduced at the International Tribunal for the Former Yugoslavia in 2003, was working reasonably well. The system appeared to be cost-effective, allowed expenditures to be controlled and afforded defence counsel more flexibility and independence in the use of resources made available to it. As to the International Criminal Tribunal for Rwanda, the Committee was informed that its legal aid reform was achieving some positive results. For example, defence costs for the pre-trial stage decreased in 2002 and 2003 by approximately 55 per cent, compared with

2001 when the legal aid reform was not in effect. The International Criminal Tribunal for Rwanda is considering the possible implementation of the lump-sum payment system. **The Advisory Committee encourages the International Criminal Tribunal for Rwanda in this effort.** The Committee was informed that the two Tribunals were actively cooperating in reforming their legal aid systems. **The Advisory Committee welcomes this cooperation.**

26. The Advisory Committee notes information in paragraphs 132 to 134 of the report of the Board of Auditors[1] on three cases of fraud and presumptive fraud at the International Criminal Tribunal for Rwanda for the financial period ended 31 December 2003. As indicated therein, a staff member misrepresented and falsified the certification of education grant claims amounting to $129,880 relating to the 1998 to 2002 academic years. The case was submitted for disciplinary action against the staff member and was still under review by June 2004. **The Advisory Committee is of the view that disciplinary action with regard to cases of proven fraud should take place in the most expeditious way; staff rules and regulations should be adopted, if necessary, to allow such swift disciplinary action.**

27. The Advisory Committee discussed with the representatives of the International Tribunal for the Former Yugoslavia the issue of premises in Sarajevo in respect of which the Board of Auditors made comments and recommendations in paragraphs 54 to 58 of its report.[2] The Committee notes that the Tribunal accepted the Board's recommendations and will take the necessary measures, including those which would improve the occupancy rate of the premises.

Notes

[1] *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 5K* (A/59/5/Add.11).

[2] *Ibid., Supplement No. 5L* (A/59/5/Add.12).

Annex

A. Impact of the recruitment freeze on the completion strategy of the International Tribunal for the Former Yugoslavia

1. In May 2004, a general and complete freeze on external hiring for all vacant posts in both the Professional and General Service categories was imposed on the International Tribunal for the Former Yugoslavia. The freeze applies to both existing vacancies and any new vacancies created by departing staff.

2. Unless exceptions are made for essential staff/functions, the hiring freeze will severely handicap the Tribunal, not only in its future work, but also in its ability to carry out its currently pending cases.

3. For instance, the Chambers has a relatively small number of legal officers and associate legal officers. Without adequate assistance from legal officers, the time required for the judges of the Tribunal to hear and decide cases will increase dramatically. It is not unusual for these officers to leave the Tribunal after a short period of time to pursue other opportunities. Several such posts are currently vacant and others will become vacant in the near future.

4. Within the Office of the Prosecutor, there are a number of key vacancies (at present around 25 per cent) which have occurred this year, including senior trial attorneys and team leaders within the Investigations Division. In the case of the team leader position, the Tribunal has lost seven of the nine team leaders to competing United Nations entities during the course of the past four months. This critical departure is having an immediate impact on the Prosecution's ability to continue with preparing cases for trial. Likewise, the departure of senior trial attorneys and senior legal advisers (expected to reach almost 50 per cent by year-end) is creating critical backlogs. The situation is nearing the critical point, whereby the Prosecution may have to suspend or delay cases owing to the non-availability of essential staff.

5. At the same time, within the Registry there are critical vacant posts in legal, conference and language support and administration, including security. Posts such as Legal Officers, Senior Reviser (French), English Editor and Legal Advisers, Technical (audio-visual) Court Support and Security Officers are essential to the operations of the Courts.

6. Although the International Tribunal for the Former Yugoslavia continues to have the authority to consider internal staff for promotions, this is only a remedy in those cases where we have staff on board who meet the requirements and skills necessary for the higher level functions. It is critical that new recruitment be allowed to bring in the necessary talent from outside, particularly in highly skilled legal functions.

7. The International Tribunal for the Former Yugoslavia is committed to meeting the completion strategy. However, we can only accomplish this if we have the resources which have been approved by the General Assembly. We have been able to maintain the work of the Tribunal for the past six months with the dedication and hard work of our staff. However, excessively long hours are not healthy and not sustainable if we want optimum performance and if we want to retain staff who may be considering opportunities in other (more permanent) organizations. Both our

Medical Officer and the Staff Welfare Officer are documenting increases in stress related cases.

8. The recent departure of staff of the International Tribunal for the Former Yugoslavia to the Volker Commission, the International Criminal Court, the Organization for the Prohibition of Chemical Weapons and the Department of Peacekeeping Operations is having a haemorrhaging effect. Staff being offered longer-term career opportunities, with no guarantee or incentives at the International Tribunal for the Former Yugoslavia, are being induced to move on. The issue of incentives to retain staff must be addressed and we fully intend to pursue this issue with both the Office of Human Resources Management and the General Assembly, as the unique nature of the Tribunal requires special measures if we are to retain highly specialized and skilled staff throughout the lifespan of the Tribunal.

B. Impact of the recruitment freeze on the International Criminal Tribunal for Rwanda

9. Currently, overall vacant posts at the International Criminal Tribunal for Rwanda total 135. The areas most impacted by the recruitment freeze imposed as of May 2004 include the following:

(a) Office of the Prosecutor

(i) Immediate Office of the Prosecutor

Posts in the Immediate Office of the Prosecutor were created with effect from January 2004. At the time of the imposition of the freeze, the Prosecutor had recommended a candidate for the post of Policy Coordinator (P-4) and was screening applications for the post of Press Officer (P-3). At the time when the Office of the Prosecutor is implementing the completion strategy, the services of the Policy Coordinator and Press Officer are indispensable. There is no one to advise the Prosecutor on policy-related matters and to send out his message and explain the work of the Office of the Prosecutor to the outside world. This handicaps the work of the Prosecutor;

(ii) Investigations Division

This is one of the areas of the Office of the Prosecutor most affected by the freeze. As a result of the announcement that new investigations would be completed at the end of 2004, many investigators have sought job security by applying for and obtaining employment elsewhere. The Investigations Section has lost one Investigator (P-4), nine Investigators (P-3), three Associate Investigators (P-2) and five General Service staff. Additionally, the Tracking Unit of the Division has lost three Investigators (P-3). The loss of staff is continuing in the Investigations Division and the freeze is making it increasingly difficult for the Division to provide the much needed trial support to ongoing trials. Unless the situation improves, the Division will reach a point where it would not be in a position to support some of the trial teams; it simply does not have staff;

(iii) Appeals Section

At the time of the imposition of the freeze, the Office of the Prosecutor had recommended candidates to fill two P-3 posts and one P-2 post in the Appeals

Section. The number of appeals that the Section has to process has increased as a result of the Cyangugu, Media, Ndindabahizi, Gacumbitsi and other appeals noted since December 2003. Furthermore, the Semanza appeal will be argued by the end of November 2004. With inadequate staff in the Section, the risk is high that the appeal in Semanza may be lost because of the shortage of staff to work on it. This is one of the sections of the Office of the Prosecutor most affected by the freeze and relief measures are required as a matter of extreme urgency;

(iv) Legal Advisory Section

The Legal Advisory Section plays a crucial role in the drafting of indictments and in dealing with complicated legal questions faced by trial teams. It provides valuable support to the work of the Office of the Prosecutor. During the freeze, the Section lost its leader, the Senior Legal Adviser, at the P-5 level, two Legal Advisers at the P-4 level and one Legal Adviser at the P-3 level. At the moment, the Section exists only in name, as there are no staff members left in it. The impact of the freeze is therefore that trial teams are denied the support that they normally get from the Section. This adversely affects the quality of work of the Prosecution;

(v) Trial Section

The Trial Section has also been heavily impacted by the freeze. The capacity of trial teams has been reduced by two vacancies at the P-5 level, Senior Trial Attorney, four vacancies at the P-4 level, Trial Attorney, two vacancies at the P-3 level, Assistant Trial Attorney, and one vacancy at the P-2 level, Case Manager. The impact is that some teams do not have enough staff for preparing and presenting witnesses in Court and for continuing with work aimed at making cases trial-ready. With the increase in trials and trial activity, the inability to fill vacancies has meant that some of the essential work, such as preparation of draft indictments, has to be put on the back burner. This affects the implementation of completion plans. It also slows down the pace of some of the trials;

(b) Registry

(i) Judicial and Legal Services Division

a. Chambers Support Section

Currently, five cases are pending in Arusha and it is important to proceed with the recruitment of a Senior Legal Officer (P-5) functioning as Chef de Cabinet in the Office of the President. The eight trials in progress will restart in January 2005 and will require seven to eight additional Associate Legal Officers at the P-2 level to be on board before January 2005;

b. Court Management Section

Four English and French Court Reporters at Field Service level; two Court Reporters' Supervisors at the P-2 level; one Audio-visual and Exhibits Assistant at the General Service level;

c. Witnesses and Victims Support Section

Chief of Section (P-5); Security and Movement Coordinator (FS-4); Security Officer (FS-3); Security Officer (GS-4); and two Witness Support Assistants at Kigali (GS-4);

(ii) Division of Administrative Support Services

a. Finance Section

Finance Officer/Chief of Accounts Unit (P-4); Finance Officer/Chief of Payments Unit (P-3); Finance Officer/Chief of Unit, Kigali (P-3). The Section currently has no professional apart from the Chief of Section;

b. Security and Safety Section

One FS-4 and one GS-3, which fell vacant and needs to be filled owing to urgent operational needs;

c. General Support Services Section

Travel clerk (GS-4);

d. Human Resources and Planning Section

We have had two recent resignations at the FS-5 and GS-4 levels which need replacement in view of the heavy workload;

e. General Service-level positions under general temporary assistance

Two Witness Support Assistants (GS-4); two Security Officers (GS-4) and Two Shipping Clerks (GS-4 and GS-3); and 32 newly created general temporary assistance Security Officer posts under the security measures Phase I.